General Assembly

Governor's Bill No. 6379

January Session, 2009

LCO No. **3059**

____HB06379HS_APP031309___

Referred to Committee on Human Services

Introduced by:
REP. CAFERO, 142nd Dist.
SEN. MCKINNEY, 28th Dist.

AN ACT IMPLEMENTING THE GOVERNOR'S BUDGET RECOMMENDATIONS CONCERNING MAXIMIZATION OF PHARMACY REBATES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Subsection (e) of section 17b-491 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(e) **[**The commissioner shall establish an application form whereby a pharmaceutical manufacturer may apply to participate in the program. Upon receipt of a completed application, the department shall issue a certificate of participation to the manufacturer.**]** Participation by a pharmaceutical manufacturer shall require that the department shall receive a rebate from the pharmaceutical manufacturer for prescriptions covered under the program and for prescriptions covered by the department pursuant to subsection (c) of section 17b-265e, as amended by this act. Rebate amounts for brand name prescription drugs shall be equal to those under the Medicaid program. Rebate amounts for generic prescription drugs shall be

established by the commissioner, provided such amounts may not be less than those under the Medicaid program. A participating pharmaceutical manufacturer shall make quarterly rebate payments to the department for the total number of dosage units of each form and strength of a prescription drug which the department reports as reimbursed to providers of prescription drugs, provided such payments shall not be due until thirty days following the manufacturer's receipt of utilization data from the department including the number of dosage units reimbursed to providers of prescription drugs during the quarter for which payment is due. The department may enter into contracts for supplemental rebates for drugs that are on a preferred drug list or formulary established by the department.

Sec. 2. Subsection (c) of section 17b-265e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(c) The Department of Social Services shall, in accordance with the provisions of this section, pay claims for prescription drugs for Medicare Part D beneficiaries, who are also either Medicaid or ConnPACE recipients and who are denied coverage by the Medicare Part D plan in which such beneficiary is enrolled because a prescribed drug is not on the formulary utilized by such Medicare Part D plan. Payment shall initially be made by the department for a thirty-day supply, subject to any applicable copayment. The beneficiary shall appoint the commissioner as such beneficiary's representative for the purpose of appealing any denial of Medicare Part D benefits and for any other purpose allowed under federal law and deemed necessary by the commissioner. Pharmaceutical manufacturers shall pay rebate amounts **[**established pursuant to section 17b-491**]** to the department for prescriptions paid by the department pursuant to this section on or after January 1, 2007. **[**The beneficiary shall appoint the commissioner as such beneficiary's representative for the purpose of appealing any denial of Medicare Part D benefits and for any other purpose allowed

under said act and deemed necessary by the commissioner.**]** For ConnPACE recipients, unit rebate amounts shall be equal to unit rebate amounts paid under the Medicaid program. For recipients of both Medicaid and Medicare, the unit rebate amount shall be calculated as follows: (1) For noninnovator multiple source drugs, the average manufacturer's price multiplied by eleven per cent; and (2) for single source or innovator drugs, the greater of the average manufacturer's price multiplied by fifteen and one tenth per cent or the average manufacturer's price minus best price. In the event the calculated rebate would establish a new Medicaid best price, the unit rebate amount will be capped at the average manufacturer's price minus best price. A manufacturer shall not be required to provide a rebate for a prescription drug that is new to the marketplace until the quarter in which the manufacturer has established a Medicaid best price for the product. The department may enter into contracts for supplemental rebates for drugs that are on a preferred drug list or formulary established by the department.

Sec. 3. Section 17b-491c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

[Except as provided in subsection (c) of section 17b-265e,**]** (a) On and after February 1, 2008, any pharmaceutical manufacturer of a prescription drug covered by the Department of Social Services under **[**any of the**]** a state medical assistance **[**programs**]** program administered by the department that is a federally qualified state pharmacy assistance program shall provide rebates to the department for prescription drugs paid for by the department **[**on or after February 1, 2008. The amount of rebates and the administration of the program shall be in accordance with subsections (e) and (f) of section 17b-491**]** under such program in unit rebate amounts equal to the unit rebate amounts paid under the Medicaid program.

(b) On and after February 1, 2008, any pharmaceutical manufacturer of a prescription drug covered by the department under a state medical assistance program that is not a federally qualified state

pharmacy assistance program shall provide rebates to the department. The unit rebate amount shall be calculated as follows: (1) For noninnovator multiple source drugs, the average manufacturer's price multiplied by eleven per cent, and (2) for single source or innovator drugs, the greater of the average manufacturer's price multiplied by fifteen and one tenth per cent or the average manufacturer's price minus best price. In the event the calculated rebate would establish a new Medicaid best price, the unit rebate amount will be capped at the average manufacturer's price minus best price.

(c) The department may enter into contracts for supplemental rebates for drugs that are on a preferred drug list or formulary established by the department.

(d) Pharmaceutical manufacturers shall submit written confirmation of participation on a form prescribed by the Commissioner of Social Services, that states the terms of participation, including, but not limited to, the process by which a manufacturer may discontinue participation. The department shall provide advance notice to participating manufacturers if a new pharmacy assistance program is established and shall provide the manufacturers with the opportunity to discontinue participation. The department shall promptly notify participating manufacturers if a state pharmacy assistance program becomes disqualified. If a program becomes disqualified and a manufacturer has paid rebates at the rate for a qualified program, the department shall reimburse the manufacturer the amount overpaid as a result of disqualification.

(e) A manufacturer shall not be required to provide a rebate for a prescription drug that is new to the marketplace until the quarter in which the manufacturer has established a Medicaid best price for the product.

(f) No payment shall be made by the department for the prescription drugs of a manufacturer that does not provide rebates to the department pursuant to this section unless a specific drug is

determined by the department to be medically necessary for an individual client.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*from passage*	17b-491(e)
Sec. 2	*from passage*	17b-265e(c)
Sec. 3	*from passage*	17b-491c

HS *Joint Favorable C/R* APP